

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARION PRICE, et al.,

Plaintiffs,

v.

THE CITY OF SEATTLE, et al.,

Defendants.

No. C03-1365L

ORDER TO SHOW CAUSE

Having reviewed the pending motions in this matter, as well as the balance of the record, the Court hereby ORDERS the parties to show cause by February 28, 2006: (1) why the Court should not decline to exercise supplemental jurisdiction over the remaining state-law claim and remand this matter to state court; or alternately (2) why the Court should not certify one or more questions of state law to the Washington Supreme Court. The reasons for the Court's order are set forth below.

Discussion

Plaintiffs filed this action in King County Superior Court in March 2003. The case was filed as a putative class action challenging the City of Seattle's policy of impounding the vehicles of persons cited for driving while their licenses were suspended (DWLS). Defendants removed this matter to federal court, citing federal question jurisdiction as the basis for removal.

1 Upon removal, this case was assigned to Judge Pechman, who certified a class. In June 2005,
2 Judge Pechman granted Plaintiffs' motion for partial summary judgment on their state-law conversion
3 claim, an order that held the City liable for conversion and left the issue of damages to be determined
4 at trial. Dkt. # 152. All remaining federal claims were subsequently dismissed. Dkt. # 176
5 (stipulation and order dismissing Plaintiffs' Fourth Amendment claims); Dkt. # 179 (order granting
6 summary judgment to City on Plaintiffs' Fourteenth Amendment claims). On January 25, 2006,
7 Judge Pechman recused herself from this matter and the case was randomly re-assigned by the Clerk
8 to the undersigned.

9 Several motions are now pending, including: (1) a motion for partial summary judgment by
10 the City of Seattle based on the failure of class members to properly file claims for tort damages
11 pursuant to RCW 4.96.010-020 and Seattle Municipal Code (SMC) 5.24.005; (2) a motion by the
12 City to decertify the class; and (3) a motion by the City under Rule 60 to "align" the rulings in this
13 case with a recent ruling in a similar state court case.

14 The City bases the latter motion on Potter v. Washington State Patrol, a case brought in
15 Thurston County Superior Court. Potter is a class action in which the plaintiffs have brought
16 conversion claims against the Washington State Patrol (WSP) based on the WSP's policy of
17 impounding vehicles driven by persons cited for DWLS. The plaintiffs in Potter are represented by
18 the same counsel representing Plaintiffs in this action. On December 9, 2005, Judge Strophy of the
19 Thurston County Superior Court granted summary judgment in favor of the WSP on the conversion
20 claim. The City indicates that the plaintiffs in Potter have filed a notice of appeal, raising concerns
21 that similar state-law claims are proceeding in state and federal court with the possibility of
22 inconsistent results.

23 "Whether a federal court should exercise supplemental jurisdiction under 28 U.S.C. § 1367(c)
24 is an issue 'which remains open throughout the litigation.'" Holly D. v. Cal. Inst. of Tech., 339 F.3d
25 1158, 1181 n.28 (9th Cir. 2003). Where, as here, the district court has dismissed all claims over
26 which it had original jurisdiction, a district court may decline to exercise supplemental jurisdiction

1 over the remaining state-law claims under 28 U.S.C. § 1367(c)(3). Indeed, the Supreme Court has
2 noted that “in the usual case in which all federal-law claims are eliminated before trial, the balance of
3 the factors . . . will point toward declining to exercise jurisdiction over the remaining state-law
4 claims.” Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 n.7 (1988).

5 In addition, 28 U.S.C. § 1367(c)(1) provides that a district court may decline to exercise
6 supplemental jurisdiction over a state-law claim if the claim raises a novel or complex issue of state
7 law. It appears that two novel issues of state law are present in this case. First, the question of
8 whether the City is subject to liability for conversion based on its DWLS impound policy appears to
9 present a novel issue of state law, since Judge Strophy reached a different conclusion than Judge
10 Pechman in ruling on a similar claim. Second, the question of whether all members of a class must
11 comply with the tort claim notice requirements of RCW 4.96.010-020 and SMC 5.24.005 has not
12 been addressed by the Washington Supreme Court, although the Washington Court of Appeals
13 decision in Oda v. State, 111 Wn. App. 79, 44 P.3d 8 (2002), may be regarded as instructive.

14 In determining whether to decline supplemental jurisdiction, the Court must consider several
15 factors, including judicial economy, comity, convenience, and fairness. See O’Connor v. State of
16 Nevada, 27 F.3d 357, 363 (9th Cir. 1994). Here, it does not appear that judicial economy would be
17 served by the continued exercise of supplemental jurisdiction. Although Judge Pechman devoted
18 considerable time and effort to this case, she has recused herself from this matter. A state court judge
19 is as capable as the undersigned to review the record and to proceed with this matter. In addition,
20 comity concerns appear to weigh in favor of remanding this case to state court, given the risk that the
21 federal and state courts may reach inconsistent results on similar issues of state law. In terms of
22 fairness and convenience to the parties, Plaintiffs originally sought to pursue this matter in state court,
23 while the City asserts that “federal court[s] should avoid proceeding with cases that are duplicative of
24 state cases on state claims to avoid piecemeal litigation, particularly where the rights at issue are
25 governed by state law.” Dkt. # 226 at 6.

1 As an alternative means of addressing the concerns discussed above, RCW 2.60.020 permits
2 the certification of questions to the Washington Supreme Court when “in the opinion of any federal
3 court . . . it is necessary to ascertain the local law of [Washington] in order to dispose of such
4 proceeding and the local law has not been clearly determined.” If this case is not remanded to state
5 court, certification of the following questions to the state Supreme Court may be appropriate: (1)
6 whether the City is subject to liability for conversion based on its DWLS impound policy; and (2)
7 whether all class members must comply with the tort claim notice requirements of RCW 4.96.010-
8 020 and SMC 5.24.005.

9 Conclusion

10 For the reasons set forth above, the parties are ordered to show cause by 5:00 p.m. on
11 February 28, 2006 why the Court should not: (1) decline to exercise supplemental jurisdiction over
12 the remaining state-law claim and remand this matter to state court; or alternately (2) certify one or
13 more questions of state law to the Washington Supreme Court. Each party’s response to this order
14 shall be limited to six pages. Neither party shall file a reply to the other party’s response to this order.

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16 The Clerk is directed to send copies of this order to all counsel of record.

17 Dated this 14th day of February, 2006.

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20 Robert S. Lasnik
21 United States District Judge
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